SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1915.

No. 504.

THE UNITED STATES, PETITIONER,

vs.

CULLMAN BROTHERS ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CUSTOMS APPEALS.

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a United States Court of Customs Appeals.

CULLMAN BROS. ET AL., APPELLANTS,
vs.
THE UNITED STATES, APPELLEE. } No. 1410.

Transcript of record on appeal from the Board of United States General Appraisers.

Filed Jul. 16, 1914. United States Court of Customs Appeals. Arthur B. Shelton, clerk.
James L. Gerry, attorney for appellants.
Printed under the direction of the clerk.
Press of Byron S. Adams, Washington, D. C.

1 *Petition.*

United States Court of Customs Appeals.

CULLMAN BROS. AND E. ROSENWALD AND BRO.
vs.
THE UNITED STATES. } 1410.

To the Honorable the United States Court of Customs Appeals:

Your petitioners, having complied with the statutes in such case made and provided, and being dissatisfied with the decisions of the Board of United States General Appraisers made within sixty days immediately preceding the date hereof in each of the matters set forth and referred to in the annexed Schedule A, which is hereby made a part hereof, as to the construction of the law and the facts respecting the classification of certain merchandise and the rate of duty imposed thereon under such classification, respectfully pray that the said Court of Customs Appeals review the questions of law and fact involved in said decisions, and for that purpose pray that an order be entered requiring the said Board of Appraisers to return to said Court of Customs Appeals the record and evidence taken by them, together with a certified statement of the facts involved in each of the said matters and their decisions thereon. And your petitioners also pray for such other or further orders or relief in the premises as the statutes provide or to the court shall seem just.

The particulars of the errors of law and fact involved in said decisions of said Board of Appraisers of which your petitioners complain are set forth in the annexed Schedule B, which is hereby referred to and made a part hereof.

Dated, New York, June 10th, 1914.

CULLMAN BROS.,
E. ROSENWALD & BRO., *Petitioners,*
By BROWN & GERRY,
Attorneys, 12 Broadway, New York City.

Schedule A.

The following are the importations and entries covered by this proceeding with the approximate dates thereof, and with
2 such other data as are convenient for purposes of identification: Decision May 13, 1914.

Entry in the name of Cullman Bros.

Entry No. 197322. Vessel, Ryndam. Entered July 22/13. Protest No. 726468/33820.

Entry in the name of E. Rosenwald & Bro.

Entry No. 139308. Vessel, Rotterdam. Entered May 19/13. Protest No. 731290/1885.

Schedule B.

The Board of United States General Appraisers has confirmed the action of the collector of the port in assessing and exacting duty, under the authority of the tariff act of October 4, 1913, on the merchandise herein, without allowing a discount of five per centum on said duties, thereby making errors of law and fact by failing to find, or finding the contrary of, the following propositions:

1. The merchandise covered by each entry herein was imported into the United States in a vessel of the Netherlands.

2. Duty was imposed on said merchandise by the tariff act of October 4, 1913, and was assessed under said act.

3. A discount of five per centum on the duties assessed should be allowed on said merchandise by virtue of subsection 7 of paragraph J of Section IV of said tariff act and the proviso of said subsection taken in conjunction with provisions of the convention of commerce and navigation between the Netherlands and the United States, proclaimed February 26, 1853.

4. The action of the collector in each case was erroneous and should be reversed.

5. The protests are well founded and should be sustained.

Endorsed: United States Court of Customs Appeals. Filed June 10, 1914. Arthur B. Shelton, clerk.

3 *Mandate.*

Mandate issued June 10, 1914.

ARTHUR B. SHELTON, *Clerk.*

Bond.

Bond of Allan R. Brown in the sum of twenty-five dollars approved by O. M. Barber, associate judge. Filed June 10, 1914.

Notice of appearance.

Gerry & Wakefield, attorneys and counsellors at law,
12 Broadway.

NEW YORK, *July 13, 1914.*

Mr. ARTHUR B. SHELTON,
Clerk, U. S. Court of Customs Appeals,
15th St. and New York Ave., Washington, D. C.

DEAR SIR: Please note that I appear as attorney for the appellant in the place and stead of Brown & Gerry in suit No. 1410, entitled Cullman Brothers et al., vs. United States.

Respectfully,

JAMES L. GERRY.

Consented to.

ALLAN R. BROWN.

Endorsed: United States Court of Customs Appeals. Filed July 14, 1914. Arthur B. Shelton, clerk.

Return of the board.

United States of America, Board of United States General Appraisers, New York, ss.

Cullman Bros. et al., appellants, vs. The United States, appellee. Board's protest Nos. 726468, etc., collectors Nos. 33820, etc., suit No. 1410.

The petitioner above named having applied to the United States Court of Customs Appeals for a review of the questions of law and fact involved in a decision of the Board of United States General Appraisers in the above case, and the said court, having by order, dated the tenth day of June, 1914, required the board to transmit to said court, the record, evidence, exhibits, and samples, together with a certified statement of the facts involved in the case and its decision thereon:

4

Now therefore, pursuant to said order, the Board of United States General Appraisers does hereby transmit to said court the record, evidence, exhibits, and samples in said case, together with a certified statement of the facts involved in the case and also its decision thereon.

This return specifically comprises the following:

1. Protests 726468/33820 and 731290/1885, with the reports of the collector of customs thereon;

2. Stipulation of counsel;

3. A copy of the board's decision in question, Abstract 35619 (T. D. 34459).

Witness The Honorable Jerry B. Sullivan, president of the board, this 19th day of June, A. D. 1914.

[SEAL.]

O. D. MADGE, *Chief Clerk.*
G. V. O.

Five per cent discount.
(Seal.)

Protest 726468/33820.

Cullman Bros., packers of domestic cigar leaf tobaccos, 174 Water St.

NEW YORK, *November 17, 1913.*

Notice of protest against assessment of duty on 38 bales (in cases) leaf tobacco. Bond No. 66,547; steamer, Ryndam, arrived, July 22, 1913.

Marks and numbers ◇ #884/886, 915/917, 928/931, 934/935, 953/954, 959, 961, 972, 978/980, 1322/1325, 1340/1348, 1396/1400.

Entry 197822.

We claim the 5 per centum discount under Section IV, paragraph J, subsection 7, of the tariff law of October 3, 1913.

Respectfully,

CULLMAN BROS.

To the COLLECTOR OF CUSTOMS, *Port of New York.*

5 Endorsed: Customhouse, New York. Received Nov. 18, 1913.

Protest 726468/33820.—Cullman Bros. (Disc. Am. vessels).

To the BOARD OF UNITED STATES GENERAL APPRAISERS:

Please take notice that we appear as attorneys in the matter of the above protest and that notice of all proceedings connected therewith and the decisions thereon should be sent to us at the address below.

STRAUSS & HEDGES,
12 Broadway, New York City.
BROWN & GERRY, *Counsel.*

Report of the collector.

DECEMBER 5, 1913.

Respectfully referred to the Board of U. S. General Appraisers for decision.

Duty was assessed in accordance with the appraiser's return on the invoice at the appropriate rate applicable under the present tariff act, without any discount being allowed or deduction made on account of the vessel's registry. Note T. D. 33647.

The protest was lodged and fee paid within the statutory time.

DUDLEY FIELD MALONE, *Collector.*

Protest 731290/1885.

W. H. Stiner & Son, 10-12 Broadway, N. Y.

NEW YORK, *July 14, 1914.*

Hon. COLLECTOR OF CUSTOMS, *Port of New York.*

SIR: Notice of dissatisfaction is hereby given with and protest is hereby made against your ascertainment and liquidation of duties

and your decision assessing duty under the tariff act of October 3, 1913, as follows:

6 We claim under section 4, paragraph J, subsection 7 of the tariff act of 1913 a discount of 5% on all duties imposed by this act upon all merchandise covered by the entry herein specified, imported in vessel admitted to registration under the laws of the United States or imported in vessel as specified below, by virtue of treaties as specified below, or any subsequent treaty terminating or modifying any of said treaties.

We claim further that the duty on each and every item of merchandise covered by said entry is entitled to said 5% discount, both by virtue of said section 4, paragraph J, subsection 7, and by virtue of a treaty or treaties made between the United States and the country of exportation, or between the United States and the country where part or all of said merchandise was produced, or between the United States and the country under whose flag the vessel conveying said merchandise sails, or by either said section or said treaty or treaties.

We claim further that the duty on each and every item of merchandise covered by the entry herein specified is entitled to said discount of 5% by virtue of the fact that a discount of 5% is allowed or has been granted in the case of merchandise imported in a vessel of the registration of the United States, or has been allowed in the case of merchandise, the growth, production, or exportation of other countries or shipped in the vessels of other countries.

The excess is paid under compulsion to obtain and retain possession of said merchandise or articles, and the demand for the repayment thereof and a readjustment or liquidation of the entry in accordance with the claims is hereby made.

The marks and numbers below enumerated are subject to errors of omission or otherwise and are given without prejudice.

Entry Nos. E 139308, B 59000. Date of entry, May 19, 1913. Liquidated, withdrawal paid Dec. 29, 1913. Vessel, Rotter-
7 dam. How registered, Netherlands. Treaty, Netherlands and other treaties, etc., specified below. Marks and Nos. 3409 one bale leaf tobacco and various as per invoices and entries.

Treaties.

Argentine Republic, 1853; Austria Hungary, 1829; Belgium, 1845, 1858, 1863, 1875; Bolivia, 1858; Borneo, 1850; Brazil, 1828; Bulgaria, 1906; Chile, 1832, 1833; China, 1844, 1858, 1880, 1903; Colombia, 1824, 1846; Congo (Kongo), 1891; Corea (Korea), 1882; Costa Rica, 1851; Canada, 1911; Cuba, 1902; Denmark, 1826; Dominican Republic, 1867; Ecuador, 1839; Egypt, 1884; Ethiopia, 1903; France, 1778, 1800, 1822, 1898, 1902, 1908; German Empire, 1871, 1900, 1906, 1907, 1907; Great Britain, 1794, 1815, 1827, 1902; Greece, 1837; Hanover, 1840, 1846; Hanseatic Republics, 1827; Hayti, 1864; Honduras,

1864; Italy, 1871, 1900, 1909; Japan, 1854, 1857, 1858, 1864, 1866, 1878, 1894, 1911; Liberia, 1862; Madagascar, 1867, 1881; Mecklenberg-Schwerin, 1847; Mexico, 1831, 1883, 1885, 1886; Muscat, 1833; Netherlands, 1782, 1839, 1852, 1907; Nicaragua, 1867; Oldenburg, 1847; Orange Free State, 1871; Ottoman Empire, 1830, 1862; Paraguay, 1859; Persia, 1856; Peru-Bolivia, 1836; Peru, 1851, 1870, 1887; Portugal, 1840, 1899, 1902; Prussia, 1785, 1799, 1828; Russia, 1832; Salvador, 1850, 1870, 1873; Samoan Islands, 1878; Sardina, 1838; Servia, 1881; Siam, 1833, 1856; Spain, 1795, 1884, 1884, 1888, 1906, 1909; Sweden, 1783; Sweden and Norway, 1816, 1827; Switzerland, 1850, 1906; Tongo, 1886; Tripoli, 1796; Tunis, 1797, 1824; Two Sicilies, 1845, 1855; Venezuela, 1836, 1860; Zanzibar, 1886; and all favored nation or reciprocal agreements, treaties, conventions and proclamations by the United States or between the United States and either of the nations specified above or any other nation.

E. ROSENWALD & BRO.,
?????????? *Atty.*

Endorsed: Customhouse, New York. Received Jan. 14, 1914.

8 Protest No. 731290/1885.

To the Board of United States General Appraisers:

Please take notice that we appear as attorneys in the matter of the above protest and that notice of all proceedings connected therewith, and the decisions thereon, should be sent to us at the address below. .

STRAUSS & HEDGES,
12 Broadway, New York City.
BROWN & GERRY, *Counsel.*

Report of the collector.

NEW YORK, *Feb. 4, 1914.*

Respectfully referred to the Board of U. S. General Appraisers for decision.

The merchandise in question was entered and liquidated in accordance with the provisions of the act of August 5, 1909, more than 30 days prior to the lodging of the protest. No reliquidation has been made under the act of October 3, 1913. Upon the withdrawal enumerated herein, made within 30 days prior to the date of filing the protest and after October 3, 1913, duty was collected at the liquidated rate for the reason that the merchandise is subject to the same rate of duty under both acts. Following the instructions contained in T. D. 33847, no deduction or discount was allowed because of the vessel's registry. Note T. D. 22805, 23074, and 33949.

The required fee has been deposited.

Note T. D. 33817.

DUDLEY FIELD MALONE, *Collector.*

Stipulation.

Before the Board of United States General Appraisers. In the matter of protest 726468/33820 of Cullman Bros., and protest 731290/1885 of E. Rosenwald & Bro.

9 It is hereby stipulated and agreed by and between the parties hereto that the merchandise covered by the above-entitled protests consists of unstemmed wrapper tobacco, the product of the soil and industry of Sumatra, and that Sumatra is a colony or dominion of the Netherlands.

It is further stipulated and agreed that the merchandise covered by protest 726468/33820 was imported into the United States from Rotterdam in the vessel "Ryndam" on or about July 22, 1913; that said vessel is, and was at the time of the importation of said merchandise, a vessel of the Netherlands; that when said merchandise was imported it was entered without payment of duty and under bond for warehousing and remained in bonded warehouse until October 4, 1913, or after.

It is further stipulated and agreed in regard to protest 731290/1885 that the merchandise was imported into the United States from Rotterdam in the vessel "Rotterdam" on or about May 19, 1913; that said vessel is, and was at the time of the importation of said merchandise, a vessel of the Netherlands; that when said merchandise was imported it was entered without payment of duty and under bond for warehousing and remained in bonded warehouse until December 29, 1913, upon which date the goods were withdrawn for consumption and duty paid.

It is further stipulated and agreed that the collector assessed duty on the merchandise herein in accordance with paragraph 181 of the tariff act of October 3, 1913; that the collector did not allow a discount of 5% on said duties or any other reduction or allowance; that these protests may be submitted for decision on this stipulation and the official record in each case.

STRAUSS & HEDGES,
Attorneys for Importers.

NEW YORK, *February 24, 1914.*

10 WM. L. WEMPLE,
Asst. U. S. Attorney General, Attorney for United States.

Endorsed: U. S. Gen. Apprs. Received Feb. 25, 1914.

Decision of the board.

Board of United States General Appraisers, New York, May 13, 1914. In the matter of protests 726468/33820 and 731290/1885 of Cullman Bros. and E. Rosenwald & Bro., against the assessment of duty by the collector of customs at the port of New York. Before Board 3.

WAITE, General Appraiser: The claim in these cases seems to be under what is known as the 5 per cent discount clause of the act of

1913, found in subsection 7 of paragraph J of said act. These cases being governed by the decision in G. A. 7540 (T. D. 34246), the protests are overruled.

BYRON S. WAITE,
EUGENE G. HAY,
Board of U. S. General Appraisers.

Endorsed: United States Court of Customs Appeals. Filed June 20, 1914. Arthur B. Shelton, clerk.

11 United States Court of Customs Appeals.

CULLMAN BROS. AND E. ROSENWALD & BRO.
v.
THE UNITED STATES. } No. 1410.

Certificate of the Attorney General.

In pursuance of the act entitled "An act to amend section 195 of the act entitled 'An act to codify, revise, and amend the laws relating to the judiciary, approved March 3, 1911,'" approved August 22, 1914, I, Thomas Watt Gregory, Attorney General of the United States, do certify that the case now pending and undecided in the Court of Customs Appeals, entitled "No. 1410, Cullman Bros. and E. Rosenwald & Bro. v. The United States," is of such importance as to render expedient its review by the Supreme Court.

Given under my hand this 29th day of Sept., 1914.

T. W. GREGORY,
Attorney General.

Filed October 2, 1914. United States Court of Customs Appeals. Arthur B. Shelton, clerk.

12 United States Court of Customs Appeals.

CULLMAN BROTHERS, E. ROSENWALD & BRO., APPELLANTS,
vs.
THE UNITED STATES, APPELLEE. } No. 1410.

The above-entitled appeal was argued by counsel and taken under advisement by the court on November 10, 11, and 12, 1914.

13 United States Court of Customs Appeals.

TUESDAY, *May 25, 1915.*

At a session of said court continued and held at the city of Washington, pursuant to adjournment, on this 25th day of May, A. D. 1915.

Present, the Honorable Robert M. Montgomery, presiding judge, and the Honorables James F. Smith, Orion M. Barber, Marion De Vries, and George E. Martin, associate judges.

The court was opened for business in due form.

No. 1346.

The M. H. Pulaski Co., Johnson & Faulkner, John Pullman & Co., appellants,

v.

The United States, appellee.

No. 1353.

R. B. Henry Co., Wiener Brothers, Lehn & Fink, W. A. Taylor & Co., J. S. Plummer & Co., Mecke & Co., J. Wile Sons & Co., appellants,

v.

The United States, appellee.

No. 1355.

J. Elliott & Co., Samstag & Hilder Brothers, appellants,

v.

The United States, appellee.

No. 1364.

Robert Muller & Co., appellant,

v.

The United States, appellee.

No. 1370.

Wood & Selick, Louis Meyers & Son, appellants,

v.

The United States, appellee.

No. 1391.

The United States, appellant,

v.

J. Wile Sons & Co., appellee.

14 No. 1392.

The United States, appellant,

v.

G. W. Faber (Inc.), appellee.

No. 1393.

The United States, appellant,

v.

Louis Meyers & Son, appellee.

Said appeals having heretofore been brought on to be heard before the court and due consideration thereon having been had, it is ordered:

(1) That the merchandise involved in these cases, imported in the registered vessels of the United States, is entitled to the five per cent discount as held by the Board of United States General Appraisers, whose decision relating thereto is hereby affirmed.

(2) That as to the merchandise imported in the registered vessels of the said treaty nations, both that which was imported and entered for consumption subsequent to the taking effect of the tariff act of 1913, as well as that which was brought to our ports prior thereto and entered in bond for warehousing, subsequently withdrawn for consumption and duties paid, the five per cent discount must be allowed, and with respect to such merchandise the decision of said board is hereby reversed.

(3) That the merchandise imported in vessels of our registry before the tariff act of 1913 took effect which was entered in bond for warehousing, subsequently withdrawn and entered for consumption and duties paid, is entitled to the five per cent discount thereon, and the decision of said board with respect thereto is reversed.

(4) That the merchandise from Cuba is entitled to the reduction of twenty per centum ad valorem provided by the Cuban treaty, and the further discount of five per centum ad valorem

No. 1394.

The United States, appellant,
v.
William Openhym & Sons, A. Wimpfheimer & Bro., appellees.

No. 1395.

The United States, appellant,
v.
Park & Tilford, appellee.

No. 1396.

The United States, appellant,
v.
Selgas & Co., appellee.

No. 1399.

E. La Montagne's Sons, appellants,
v.
The United States, appellee.

No. 1410.

Cullman Brothers, E. Rosenwald & Bro., appellants,
v.
The United States, appellee.

No. 1440.

A. Lorsch & Co., Henry Glass & Co., F. L. Kraemer & Co., L. D. Bloch & Co., A. Leipzig (Inc.), A. J. Dale, appellants,
v.
The United States, appellee.

from the amount so ascertained. As to such importations the decision of said board is hereby affirmed.

And said appeals are remanded to said board for proper action in the premises.

De Vries, associate judge, dissents.

* * * * * * *

(Signed) ROBERT M. MONTGOMERY,
Presiding Judge.

15 United States Court of Customs Appeals.

CULLMAN BROTHERS, E. ROSENWALD & BRO., APPELLANTS,
vs.
THE UNITED STATES, APPELLEE. } No. 1410.

For the opinion of the court in the above-entitled appeal see transcript of record in the case of R. B. Henry Co. et al., appellants, v. The United States, appellee, No. 1353.

16 United States Court of Customs Appeals.

CULLMAN BROTHERS, E. ROSENWALD & BRO., APPELLANTS,
vs.
THE UNITED STATES, APPELLEE. } No. 1410.

I, Arthur B. Shelton, clerk of the United States Court of Customs Appeals, do hereby certify that the attached pages contain a true and complete transcript of the record and proceedings had in said court in the above-entitled appeal, as the same remain of record and on file in this office.

Witness my hand and the seal of this court this 11th day of June, A. D. 1915.

[SEAL.] ARTHUR B. SHELTON, *Clerk.*

17 United States of America, ss.

The President of the United States of America to the Honorable the Judges of the United States Court of Customs Appeals, greeting:

Being informed that there is now pending before you a suit in which Cullman Brothers et al. are appellants and The United States is appellee, No. 1410, which suit was removed into the said Court of Customs Appeals by virtue of an appeal from the Board of United States General Appraisers, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Court of Customs Appeals and removed into the Supreme Court of the United States
18 do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the twenty-fourth day of June, in the year of our Lord one thousand nine hundred and fifteen.

[SEAL.] JAMES D. MAHER,
Clerk of the Supreme Court of the United States.

19 (Indorsed:) File No. 24,785. Supreme Court of the United States, No. 1041, October term, 1914. The United States vs. Cullman Bhothers et al. Writ of certiorari.

20 In the Supreme Court of the United States, October term, 1914.

THE UNITED STATES, PETITIONER,
v.
CULLMAN BROS. ET AL. } No. 1041.

Stipulation as to return to writ of certiorari.

It is hereby stipulated by counsel for the parties to the above-entitled cause that the certified copy of the transcript of the record

on file in the Supreme Court shall constitute the return of the clerk of the Court of Customs Appeals to the writ of certiorari issued herein.

JNO. W. DAVIS,
Solicitor General.
JAMES L. GERRY,
Counsel for Respondents.

JUNE 25, 1915.

Filed June 25, 1915. United States Court of Customs Appeals. Arthur B. Shelton, clerk.

21 *Return to writ.*

United States Court of Customs Appeals.

In obedience to the command of the within writ of certiorari and in pursuance of the stipulation of the parties, a full, true, and complete copy of which is hereto attached, I hereby certify that the transcript of record furnished with the application for a writ of certiorari in the case of Cullman Brothers et al. v. The United States, No. 1410, is a full, true, and complete transcript of the record and proceedings in said appeal.

In testimony whereof I hereunto subscribe my name and affix the seal of the United States Court of Customs Appeals this twenty-sixth day of June, A. D. 1915.

[SEAL.] ARTHUR B. SHELTON,
Clerk of the United States Court of Customs Appeals.

(Stamped:) Office of the Clerk, Supreme Court U. S. Received June 29, 1915.

22 (Indorsed:) File No. 24,785. Supreme Court U. S., October term, 1915. Term No. 504. The United States, petitioner, vs. Cullman Brothers et al. Writ of certiorari and return. Filed June 29, 1915.

File No. 24,785. U. S. Court of Customs Appeals. Term No. 504. The United States, petitioner, vs. Cullman Brothers et al. Petition for writ of certiorari and exhibit thereto and waiver of notice of submission. Filed June 12, 1915. File No. 24,785.

WASHINGTON: GOVERNMENT PRINTING OFFICE: 1915